

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1785 OF 2022

Shaikh Manjoor Shaikh Khajamiya
Age 52 years, Occu. Labour
R/o Ganesh Par, Parali V.,
Tq. Parali V., District Beed

... PETITIONER

VERSUS

- 1) The State of Maharashtra
through Hon'ble Joint Secretary,
Home Department,
Mantralaya, Mumbai.
- 2) The Section Officer
Home Department (Special)
Government of Maharashtra, Mumbai
- 3) The District Magistrate, Beed,
Collector Office, Beed.
- 4) Superintendent of Police,
Beed, Tq. & Dist. Beed
- 5) The Police Inspector,
Parali City Police Station,
Tq. Parali, Dist. Beed.

... RESPONDENTS

.....
Mr. Ashraf Patel, Advocate holding for
Mr. Abid R. Shaikh, advocate for petitioner
Mr. N.T. Bhagat, A.P.P. for respondents
.....

**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

Date of reserving judgment : 5th July, 2023

Date of pronouncing judgment : 10th July, 2023

JUDGMENT (PER R.G. AVACHAT, J.) :

Rule. Rule made returnable forthwith and taken up for final hearing at admission stage with the consent of learned counsel for the parties.

2. The challenge in this Writ Petition, under Article 226 of the Constitution of India is to the order dated 14/10/2022, passed by the respondent No.3, District Magistrate, Beed, detaining the petitioner under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 (M.P.D.A. Act for short). The order of detention has been confirmed by the respondent No.1 – State. The detention is on the ground of the petitioner being a bootlegger and his such activities were prejudicial to the maintenance of public order.

3. The learned counsel for the petitioner would submit that, only one crime registered under Section 65(e) of the Maharashtra Prohibition Act in August 2022 and two in-camera statements of witnesses have been relied on to pass the order impugned herein. According to the learned counsel, the order of detention does not suggest the detaining authority to have applied its mind and arrived at a subjective satisfaction. According to the learned counsel, the reading of the order would indicate that the

petitioner was termed as a dangerous person, while the order has been passed, he being a bootlegger. We were taken through the in-camera statements of the witnesses to ultimately urge for grant of the petition.

4. The learned A.P.P. would, on the other hand, submit that, there were not less than six crimes registered against the petitioner for the offences punishable under the Maharashtra Prohibition Act. A preventive action had also been taken against the petitioner. The ordinary law fell short to curb the petitioner's activities. The concerned Police Station Officer had, therefore, to propose to take action under Section 3(2) of the M.P.D.A. Act. In-camera statements were recorded. Those have been duly verified by high-ranking police officers. This Court cannot sit in appeal over the order of detention. Subjective satisfaction of the detaining authority is writ large from the order of detention itself. He, therefore, urged for dismissal of the petition.

5. Considered the submissions advanced. Perused the order impugned herein. Before advertng to the factual matrix, a glance at the relevant provisions of the M.P.D.A. Act would not be out of place.

6. Section 2(a) of the M.P.D.A. Act reads as under :

“2. In this Act, unless the context otherwise requires, –

(a) “acting in any manner prejudicial to the maintenance of public order” means –

(i)

(ii) in the case of bootlegger, when he is engaged, or is making preparations for engaging, in any of his activities as a bootlegger, which affect adversely, or are likely to affect adversely, the maintenance of public order;

(b) “bootlegger” means a person, who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provisions of the Bombay Prohibition Act, 1949 and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacles or any other materials whatsoever in furtherance or support of the doing any of the above mentioned things by or through any other person, or who abets in any other manner the doing of any such thing.

7. The order was also challenged on the ground of having not assigned reasons therein for detaining the petitioner for a maximum period of 12 months, when the detaining authority had a discretion even to detain for a lesser period. Mr. Nerlikar, learned A.P.P. addressed us on this issue. According to him, the detention order need not contain the reasons as regards detaining the person for a maximum period. According to him, under Section 14 of the M.P.D.A. Act, the State Government has authority to revoke or

modify the detention order, at any time. We are convinced with the submissions made by the learned A.P.P.

8. Although some past criminal activities of the petitioner have been referred in the detention order, those have not been relied on as a basis for the order of detention. Paragraphs No.4 to 6 of the order of detention spell out the reasons in support of the order. The same are, therefore, reproduced below :

“4. Recently, your involvement is noticed in the following offences which are of serious nature and are suggestive of your violent tendencies and inclinations to perpetuate your criminal activities as a ‘Bootlegger’. These criminal activities of your prejudicial to the maintenance of public order as defined in Section 2(a)(ii) of the said Act and hence, I, being the Detaining Authority, have relied mainly upon the same while passing the order of detention. I have considered the following one offence mentioned below at Para No.5.1 and two in-camera statements mentioned at Para No.6.1 and 6.2 to issue this detention order. The relevant documents regarding the infestation of these offence are enclosed herewith in order to enable you to make an effective representation.

Offences considered for Passing Detention Order

Sr. No.	Police Station	Crime No.	Section	Date of registration	Charge-Sheet No.	Court Case No.	Present Status
1]	Parali City	192/2022	65(e) M. Prohibition Act	29/8/2022	---	---	On investigation

5. Particulars of Offence considered for Passing Detention Order :-

5.1. Police Station Parali City, Crime No.192/2022 u/sec. 65(e) of Mah. Pro. Act – possessing illicit liquor.

5.1.1. Shri. Shrikant Chhoturam Rathod, Age :- 33 years, Occu:- Service, PC/1439, Police Station Parali City is the complainant of said offence.

5.1.2. Shri Shri. Shrikant Chhoturam Rathod, Age :- 33 years, Occu:- Service, PC/1439, Police Station Parali City filed complaint at P.S. Parali City on 29/08/2022 that, complainant along with PC 1137 Walvi, PC 2082 Kolamwadi, PC 2154 Gore were on patrolling within the jurisdiction of P.S. that time they received secret information that person namely Shaikh Manjoor Shaikh Khajamiya, R/o Ganeshpar, is possessing and selling illicit liquor illegally at his house at Ganeshpar. After receiving said information it was informed to Hon'ble P.I. and along with two panchas effected raid at the spot and on seeing Police Raid party, person who was selling liquor namely Shaikh Manjoor Shaikh Khajamiya fled away by leaving muddemal of prohibition.

On taking search of spot of incident, there found 35 Ltr. Illicit liquor worth Rs.5250/-. Out of said illicit liquor C.A. sample took in 180 ml. glass bottle and sealed and remaining liquor destroyed at the spot. C.A. sample sent to Forensic Science Laboratory, Aurangabad for analysis. Accordingly on the basis of complaint offence is registered.

5.1.3. The investigation of present crime was entrusted to PC C.P. Walvi B.No.1137. Investigation is going on in the said crime.

6. After considering the seriousness of the offence described above, Police Inspector of Parali City Police Station conducted a confidential inquiry in to your criminal activities. The enquiry revealed that, you have terrorized the residents of the area where you live as well as the residents of the adjoining areas. As you are a

‘Bootlegger’, nobody generally dares to complaint against you openly, due to fear of retaliation. But two witnesses were found and they took in confidence. They were assured that their statements will be kept secretly and they will not call before Court or any Forum for leading evidence, and after taking them in confidence they gave their statements. Therefore, their name, address, occupation and date and spot are not disclosed. (Article 226 Indian Constitution) which is my right. The witnesses have given their statement before Police Inspector, P.S. Parali City, and thereafter, Sub Divisional Police Officer, Sub Division, Ambajogai has verified those statements and submitted his report to Detaining Authority. The gist of the ‘in-camera’ statement is as under.

6.1. confidential witness-A.

Said witness is resident of jurisdiction of P.S. Parali City. Witness in his confidential statement stated that, he is resident of above place and knowing Shaikh Manjoor Shaikh Khajamiya, R/o Ganeshpar Parali means you since last 10 to 12 years.

6.1.1. On 25/08/2022 about 5.00 to 6.00 p.m. he was proceeding towards home from Ganeshpur that time one person who consumed liquor gave jerk him. He asked him as to why he gave jerk on it he abused and went ahead. That time he stated loudly that due to consumption of liquor by the persons, and selling liquor at Ganeshpur area, the passing of public at large, females and girls by the Ganeshpar road is in danger. Shaikh Manjoor Shaikh Khajamiya means you who was standing near to house see him with angry and asked whether he is arrogance and went inside the house and came with iron rod from the house and stated in Hindi language “Madarchod go from this place quietly” and threatened “if he attend Police Station you will not alive him” abused in filthy language and assaulted with iron rod and caused injury. At the relevant time many persons were gathered on seeing assault to him. But due to your bullying and terror no one came to rescue him. He anyhow rescued from your clutch

and went to home. That time businessmen have shut their shops and fled away therefrom. You are always possessing illegal arms therefore persons are fearing you. Due to your terror he has not filed complaint in Police Station. You along with your associates assaulting persons residing in the area of Fulenagar. You are bringing illicit liquor from Dharavati Tanda and selling it illegally at Ganeshpar Parali. Due to the persons coming for consuming liquor towards you, ladies and girls who are passing from public road in the area of Ganeshpar are harassing. If any one filed complaint about this, then you along with your companions assaulting those persons who had lodged report.

6.1.2. Witnesses stated that, he has given his statement on condition that his statement and his identity will be kept secretly. Witness stated that, if he will call to depose against you, there shall be danger to his life at your hand therefore he will not come.

6.2. Witness B:-

Said witness is living in the area of Police Station Parali City. He stated that, he knows Shaikh Manjoor Shaikh Khajamiya, R/o Ganeshpar Parali V., Tq. Parali, Dist. Beed means you since last 8 to 9 years. Shaikh Manjoor Shaikh Khajamiya means you are selling illicit liquor at Ganeshpar area. Due to the persons who are coming for consumption of liquor, there is harassment of general public, women and girls who are passing from public road in Ganeshpar area and if any one filed complaint you alongwith your associates assaulting said person. Therefore there is your terror in Parali city.

6.2.1. On 26/08/2022 on Friday about 6.00 p.m. he was at Ganeshpar square, two girls from lane were going towards Vajjnath temple, one person who consumed liquor came in front of them and harassing them. That time he stated loudly that due to such persons of consuming liquor and selling liquor their ladies and girls are facing problems. That time you came from the house towards him by

holding knife and uttered words in Hindi “whether you are leader of lane, not to try to become leader henceforth else you will kill him” and saying this you fallen him down by giving kick and fist blows and put knife on his neck. That time many persons were gathered but due to your terror no one came to rescue. On the contrary, due to your fear persons fled away. Shopkeepers have shut their shops. Due to your fear he has not filed complaint in Police Station. He is giving his statement on keeping his statement secret and not to come for leading evidence.

9. The facts of Crime No.192/2022, registered for offences punishable under Section 65(e) of the Maharashtra Prohibition Act indicate that, based on a tip-off, the team of police officials effected raid at the house of the petitioner. The petitioner was present. Having seen the raiding party, he fled. 35 litres of illicit liquor worth Rs.5250/- was found at the residence of the petitioner. No customer was present there. We fail to understand as to how and in what manner these facts constitute the petitioner’s said action to be prejudicial to the maintenance of public order.

10. Same is the case in relation to in-camera statements referred to hereinabove. The statements of both the witnesses do not indicate that the incidents narrated by them had happened because of illicit liquor sold at the residence of the petitioner. The statement of first witness indicates the petitioner to have come out of his residence. He was armed with an iron rod. A passer-by who was under influence of alcohol, had a quarrel with another passer-

by. The petitioner abused one of them and even assaulted. What has been narrated by the said witness does not lead us to infer that the said incident between those two passer-by had happened because of one of them consumed alcohol sold by the petitioner at his residence. Same is the case about in-camera statement of another witness. In paragraph No.7 of the impugned order, it has been observed :-

“You have unleashed a reign of terror and have become a perpetual danger to the society at large in the area of Ganeshpar Parali. People here are experiencing a sense of insecurity and are living under a shadow of constant fear, whereby even day-to-day business and activities of citizens are under threat from you. You show no respect to the law of the land and to the citizens of the society where you live. You are an impulsively violent man who wants to spread terror in the society by your violent criminal activities, in connivance with your criminal associates.

11. In view of the above, it is manifestly clear that the detaining authority appears to have been influenced by the petitioner's alleged violent criminal activities and not the fact that he was a bootlegger. In our view, the reasons given by the detaining authority undoubtedly indicate him to have passed the order without subjective satisfaction. The impugned order is, therefore, liable to for judicially reviewed. Interference with the impugned order is, therefore, warranted. The Writ Petition, therefore, succeeds. Hence the order :

ORDER

- (i) The Criminal Writ Petition is allowed in terms of prayer clauses (B) and (B-1).
- (ii) The petitioner be released immediately if not required in any other case.
- (iii) Rule made absolute in above terms.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-